

ORDINANCE NO. 28787

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 2.08.1210, 2.08.1220, 2.08.1225, 2.08.1235, 2.08.1240, 2.08.1245, AND 2.08.1270 OF PART 12 OF CHAPTER 2.08 OF TITLE 2 AND AMENDING SECTION 3.36.330 OF PART 3 OF CHAPTER 3.36 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO REVISE THE STRUCTURE OF THE BOARD OF ADMINISTRATION FOR THE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN, TO ADOPT MINIMUM QUALIFICATION CRITERIA FOR PUBLIC MEMBERS OF SAID BOARD, REVISE PROVISIONS FOR COMPENSATION OF BOARD MEMBERS AND REVISE THE DEFINITION OF A BOARD QUORUM

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 2.08.1210 of Part 12 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:

2.08.1210 Members

The Board shall consist of nine (9) members as follows:

- A. Five (5) members of the Board shall be members of the public appointed by the City Council;
- B. One (1) of the members shall be an employee in the Police Department who is also a member of the Police and Fire Department Retirement Plan;
- C. One (1) of the members shall be an employee in the Fire Department who is also a member of the Police and Fire Department Retirement Plan;

- D. One (1) of the members shall be a person who was employed in the Fire Department and has retired under the provisions of the Police and Fire Department Retirement Plan;
- E. One (1) of the members shall be a person who was employed in the Police Department and has retired under the provisions of the Police and Fire Department Retirement Plan;
- F. A person, as designated by the Council, or the Mayor, if authorized by the Council, who holds a position in the City administration at a level at least as high as deputy department head and who has experience in the investment or management of public funds, retirement funds, or institutional or endowment funds shall be a member of the Board, until at least two (2) public members have been appointed; and
- G. Two (2) members of the City Council as designated by the Council, or the Mayor, if authorized by the Council, shall be members of the Board, until three (3) public members have been appointed. One (1) member of the City Council as designated by the Council, or the Mayor, if authorized by the Council, shall be a member of the Board, until four (4) public members have been appointed.

SECTION 2. Section 2.08.1220 of Part 12 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to be entitled and to read as follows:

2.08.1220 Qualifications - Public Members

- A. Each public member of the Board shall reside or have primary place of employment or business within a fifty (50) mile radius of San José City Hall.

- B. Each public member of the Board shall possess a baccalaureate degree from an accredited college or university in finance, actuarial science, law, economics, business or other relevant field of study. An advanced degree in a relevant field of study or professional certification is desirable but not required.
- C. Each public member of the Board shall possess a high level of knowledge and expertise, and at least twelve (12) years experience, relevant to the administration of a public retirement plan. Knowledge and expertise relevant to the administration of a public pension system may include but is not limited to experience in: a senior executive position in pension administration; pension actuarial practice; institutional investment management; auditing; accounting; legal; health and welfare and/or employee benefits management; investment management; banking; asset/liability management for an insurance company; college or university professor with a focus on fiduciary or trust fund law or a quantitative background in financial theory or actuarial math. Twelve (12) years combined experience in related field may meet this requirement.
- D. The following individuals shall not be eligible to serve as public members of the Board: current and former City employees; current or former elected or appointed City officials; retired members of, or persons participating in or receiving benefits from the Police and Fire Department Retirement Plan or the Federated City Employees Retirement System; a representative from any union or bargaining unit representing City employees; any immediate family member of a City employee or persons participating in or receiving benefits from the Police and Fire Department Retirement Plan or the Federated City Employees Retirement System.
- E. No person having a conflict of interest, significant potential for conflict of interest, or appearance of conflict of interest, shall be appointed as a public member of

the Board. For the purpose of evaluating conflicts or interest, potential conflicts of interest and the appearance of conflict of interest of Board members, all applicants for public member Board positions shall be required to provide disclosure information, in such form and substance as may be required by the Council, to allow Council to evaluate conflicts of interest, significant potential for conflicts of interest, or appearance of conflicts of interest, including but not limited to disclosure of information related to investments, ownership of real property, employment and business positions, income sources and loans of the prospective public member applicant and members of the applicant's immediate family. Disclosure of such conflict of interest, significant potential for conflict of interest, or appearance of conflict of interest, information as may be required by Council shall be provided by the applicant at the time of submission of an application for a public member position on the Board, and annually thereafter, concurrently with such conflict of interest disclosure as Board members may otherwise be required by law to file.

- F. For the purpose of this Section 2.08.1220, immediate family member means a person having any of the following relationships to a City employee or person participating in or receiving benefits from the Police and Fire Department Retirement Plan or the Federated City Employees Retirement System:
1. By Blood: Parent, child, grandparent, grandchild, brother, sister, nieces, nephews, uncles, aunts, great grandchildren, great grandparents.
 2. By Marriage: Husband, wife, stepparent, stepchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, half-sister, half-brother.

3. By Law: Guardianship relationships and adoptive parent/child relationships.
4. Domestic Partner: Individuals registered with the Human Resources Department and/or the State of California.

SECTION 3. Section 2.08.1225 of Part 12 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to be entitled and to read as follows:

2.08.1225 Terms of Office

All members of the Board shall serve for a term of four (4) years, except for the retired member of the pre-existing Board and Council members and administration members temporarily designated as Board members pursuant to section 2.08.1210.F. and 2.08.1210.G. All public members of the Board shall be eligible for reappointment to successive four (4) year terms.

SECTION 4. Section 2.08.1235 of Part 12 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:

2.08.1235 Terms of Office - Retired Members

A. The member who is required to be a person who retired from the Fire Department under the provisions of the Police and Fire Department Retirement Plan (hereafter "retired member") shall be appointed and shall serve for the following term:

1. The first retired Fire Department member shall be appointed for a term expiring at four (4) years after his or her appointment.

2. The retired member of the preexisting Board immediately prior to the effective date of the ordinance creating two retiree Board positions shall continue to serve as the retired Police member of the Board established by this Part until the expiration of his current term on November 30, 2012, or his seat becomes vacant under the provisions of Part 1 of this Chapter, whichever first occurs.
- B. Each retired member thereafter appointed to the Board shall be appointed for a term expiring four (4) years after the date of expiration of the preceding member's term; to serve as a member until the expiration of his or her term or until his or her seat becomes vacant under the provisions of Part 1 of this Chapter.
- C. Whenever a vacancy occurs in the seat held by a retired member, the Council, or the Mayor, if authorized by the Council, shall appoint a successor in conformance with the provisions of Section 2.08.1245 of this Code.
- D. Retired members may not serve more than two (2) consecutive terms unless no other retired member is recommended pursuant to Section 2.08.1245.

SECTION 5. Section 2.08.1240 of Part 12 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to be entitled and to read as follows:

2.08.1240 Procedure for Filling Public Member Vacancies

- A. The City Council shall appoint the public members of the Board.

- B. One of the public members of the Board shall be appointed by the City Council only after the candidates for such seat have been interviewed by the then existing Board and a recommendation for appointment has been made by the Board to the Council.
1. If a majority of the Board recommends one (1) candidate, only that candidate will be forwarded to the City Council for consideration.
 2. If a majority of the Board does not recommend one (1) candidate, the top two (2) candidates will be forwarded to the City Council for consideration.
 3. The first public member to be appointed pursuant to this Section 2.08.1240.B. will not be appointed until the four (4) other public members' seats have been filled, by Council and all other seats on the Board have been filled by Council. Thereafter, any vacancy in the seat held by such public member shall always be filled pursuant to this Section 2.08.1240.B.

SECTION 6. Section 2.08.1245 of Part 12 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to be entitled and read as follows:

2.08.1245 Recommendations for Filling Employee and Retiree Vacancies

- A. Whenever a vacancy exists in a seat on the Board held by an employee in the Police Department, the employees of the Police Department who are members of the Plan shall recommend, at an election to be conducted among them by the City Clerk, one of such employees as a successor for such seat.
- B. Whenever a vacancy exists in a seat on the Board held by an employee in the Fire Department, the employees of the Fire Department who are members of the

Plan shall recommend, at an election to be conducted among them by the City Clerk, one of such employees as a successor for such seat.

C. Whenever a vacancy exists in a seat on the Board held by a retired Police member of the Plan because of the expiration of a retired Police member's term of office, the following procedures shall apply:

1. The retired members of the Plan shall recommend, at an election to be conducted among them by the City Clerk, one of such retired members as a successor for such seat.
2. A panel consisting of a representative from the San José Police Officers' Association, a representative from International Association of Fire Fighters, Local 230, and a representative from the City Manager's Office shall interview the three (3) (or less if there are fewer than three candidates) retired members receiving the highest number of votes. The purpose of the interview shall be to ensure that the candidates are viable in that they will be able to attend meetings of the Board and fulfill the time commitment of member of the Board.
3. The panel shall recommend to the City Council one (1) of the interviewed retired Police members for appointment to the Board. The panel's recommendation shall be determined by a majority of the members of the panel; provided that a dissenting member of the panel may submit a minority report. If there is no majority for the recommendation of a retired member, each member of the panel may submit a written report to the City Council.

- D. The initial vacancy in the seat on the Board for retired Fire member of the Plan, and any subsequent vacancy in a seat on the Board held by a retired Fire member of the Plan because of the expiration of a retired Fire member's term of office, shall be filled as follows:
1. The retired members of the Plan shall recommend, at an election to be conducted among them by the City Clerk, one (1) of such retired members as a successor for such seat.
 2. A panel consisting of a representative from the San José Police Officers' Association, a representative from International Association of Fire Fighters Local 230, and a representative from the City Manager's Office shall interview the three (3) (or less if there are fewer than three candidates) retired members receiving the highest number of votes. The purpose of the interview shall be to ensure that the candidates are viable in that they will be able to attend meetings of the Board and fulfill the time commitment of member of the Board.
 3. The panel shall recommend to the City Council one (1) of the interviewed retired Fire members for appointment to the Board. The panel's recommendation shall be determined by a majority of the members of the panel; provided that a dissenting member of the panel may submit a minority report. If there is no majority for the recommendation of a retired member, each member of the panel may submit a written report to the City Council.
- E. Whenever a vacancy occurs in the seats on the Board held by retired members of the Plan prior to the expiration of the retired member's term of office, the following procedures shall apply:

1. The association of retired Police officers and Firefighters shall recommend up to three (3) candidates for appointment for the remainder of the unexpired term.
 2. The Board shall interview the recommended candidates and recommend one (1) or more of them for appointment by the City Council for the remainder of the unexpired term.
- F. The appointment of employee and retiree members shall be routine business on the Council agenda.
1. Council shall only reject the employee recommended by a majority of those voting in an election among employees upon a finding of cause for rejection.
 2. Council shall only reject the retiree recommended by an interview panel upon a finding of cause for rejection.
 3. Cause for rejection may include, but is not be limited to, Council finding that the recommended candidate will not be able to attend meetings of the Board and fulfill the time commitment of a member of the Board, or to act in accordance with fiduciary duties or carry out the requirements of governing legislation, including the requirements of Chapter 3.36 of Title 3 of this Code.

SECTION 7. Section 2.08.1270 of Part 12 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:

2.08.1270 Compensation

- A. Any member of the Board who is neither a member of the City Council nor an employee of the Police Department or the Fire Department shall be paid, as compensation for services as a member of the Board, the sum of one hundred fifty dollars (\$150.00) per month.
- B. Such compensation shall be in addition to such reimbursement, if any, as such member may become entitled to for expenses incurred by the member in the performance of the duties and functions of office.
- C. No compensation shall be paid for any month in which the member was absent from the regular meeting of the Board and the absence was unexcused under the provisions of this Chapter 2.08.
- D. The compensation paid to the member shall be paid from the Police and Fire Department Retirement Fund as an administrative expense of the Police and Fire Department Retirement Plan.

SECTION 8. Section 3.36.330 of Part 3 of Chapter 3.36 of Title 3 of the San José Municipal Code is amended to read as follows:

3.36.330 Retirement Board - Meetings - Quorum - Voting

The Retirement Board shall hold regular meetings monthly at a time and place to be determined by the Board. Special meetings may be held at any time and place upon the call of its president or of a quorum of the members of the Board. Until at least seven (7) seats on the Board are filled for the first time after adoption of the ordinance increasing the Board to nine (9) members, four (4) members of the Board shall be necessary to constitute a quorum for the Board to take action, although a lesser

number may adjourn from time to time. Once seven (7) seats on the Board have been filled for the first time after adoption of the ordinance increasing the Board to nine (9) members, a majority of the total number of member seats, filled or vacant, shall be necessary to constitute a quorum, although a lesser number may adjourn from time to time. The Board shall act by resolution, order or motion. All meetings shall be open and public.

PASSED FOR PUBLICATION of title this 10th day of August, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, NGUYEN, OLIVERIO, PYLE; REED.

NOES: LICCARDO.


ABSENT: NONE.

DISQUALIFIED: NONE.

ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor